

APR 28 1978

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
October Term, 1977

No. 77-1115

In the Matter of the Petition of
ROBERT M. LALLI,
Appellant,
To Compel Rosamond Lalli as Administratrix of the Estate of
MARIO LALLI, Deceased,
Appellee.

To render and settle her account as such Administratrix.

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

APPENDIX

Docketed February 8, 1978
Probable Jurisdiction Noted March 20, 1978

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Chronological List of Relevant Docket Entries

December 26, 1973.

Letters of Administration issued to respondent Rosamond Lalli, as Administratrix of the Estate of Mario Lalli, Deceased.

August 26, 1974.

The appellant, Robert M. Lalli, filed a petition for a compulsory accounting by the Administratrix and citation issued to her to show cause.

September 16, 1974.

The respondent filed a verified answer to the petition.

October 1, 1974.

The respondent filed a notice of motion to dismiss the petition.

November 26, 1974.

The Surrogate entered a decree dismissing the petition.

November 26, 1974.

The appellant filed a notice of direct appeal to Court of Appeals on constitutional grounds.

November 25, 1975.

The Court of Appeals affirmed the decree of Surrogate's Court, Westchester County, 38 N.Y. 2d 77.

Chronological List of Relevant Docket Entries

January 23, 1976.

The appellant filed with the Clerk of Surrogate's Court Notice of Appeal to the Supreme Court of the United States.

May 16, 1977.

The Supreme Court of the United States vacated the judgment of the Court of Appeals and remanded the case to it for further consideration in light of *Trimble v. Gordon*, 430 U.S. 762, 431 U.S. 911.

June 1, 1977.

Attorney General of the State of New York made a party pursuant to section 71 of the Executive Law of New York.

November 17, 1977.

The Court of Appeals 5 to 2 adhered to its prior determination, 43 N.Y. 2d 65.

January 6, 1978.

The appellant filed with the Clerk of Surrogate's Court notice of appeal to the Supreme Court of the United States.

February 8, 1978.

Jurisdictional statement docketed.

March 20, 1978.

Probable Jurisdiction Noted.

Petition

SURROGATE'S COURT

COUNTY OF WESTCHESTER

File No. 1760—1973

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In the Matter of the Petition of

ROBERT M. LALLI

to compel ROSAMUND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased to render and settle her accounts as such Administratrix.

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To the Surrogate's Court of the County of Westchester:

The petition of Robert M. Lalli residing at 135 Daisy Farm Drive in the City of New Rochelle, County of Westchester, State of New York respectfully shows:

That on the 26th day of December, 1973 Letters of Administration of the goods, chattels and credits of Mario Lalli, deceased who at the time of his death resided at 415 Gramatan Avenue, in the City of Mount Vernon, County of Westchester and State of New York, were granted to Rosamund Lalli and that more than seven months have elapsed since said appointment.

That more than fifteen days have elapsed after the time in which to present claims has expired.

That the said Rosamund Lalli not rendered any account of her proceedings as such Administratrix.

That your petitioner and his sister Maureen Lalli are interested in the estate of said deceased as natural children born out of wedlock, who have been supported by decedent

Petition

and your Petitioner having been acknowledged as son, in writing.

That there are no other persons than those mentioned interested in the application.

Wherefore your petitioner prays for a judicial settlement of the accounts of Rosamund Lalli as such Administratrix and that the said Rosamund Lalli may be cited to show cause why she should not render and settle such account.

Dated August 23rd, 1974.

ROBERT M. LALLI,
Petitioner.

STATE OF NEW YORK }
COUNTY OF WESTCHESTER }ss.:

ROBERT M. LALLI, being duly sworn, deposes and says that he is the petitioner in this proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

ROBERT M. LALLI

(Jurat omitted in Printing)

**Verified Answer and Objection of Administratrix
on Compulsory Accounting.**

SURROGATE'S COURT

COUNTY OF WESTCHESTER

In the Matter of the Petition of

ROBERT M. LALLI, to compel ROSAMOND LALLI, as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts as such Administratrix.

ROSAMOND LALLI, as Administratrix of the goods, chattels and credits of Mario Lalli, deceased, answering the petition filed herein on the 23rd day of August 1974, for a compulsory judicial settlement of the account of the said administratrix, does hereby allege and object as follows:

1. On the 26th day of December 1973, letters of administration of the goods, chattels and credits of Mario Lalli, deceased, were duly issued to respondent by this court, and she thereupon duly qualified and thereafter acted and is still acting as such administratrix.
2. That she denies the allegations of the petition that Robert M. Lalli and Marleen Lalli, or either of them, are the natural or acknowledged children of the deceased.
3. That neither Robert M. Lalli, nor Marleen Lalli are distributees of the deceased and may not inherit any part of his estate pursuant to EPTL 4-1.2 and have no status herein to demand a judicial settlement of the administratrix's accounts.
4. That respondent does not desire to file an account at this time or until a final judicial determination is made determining the status of petitioner and his sister and

*Verified Answer and Objection of Administratrix
on Compulsory Account*

that she is not the sole beneficiary of said estate. A formal accounting may not be necessary and she seeks to avoid its expense. Also the estate has a claim against the petitioner for \$10,784.99 with interest which is contested and should be determined before the final accounting is made.

Further, the estate is not ready at this time to make a final accounting and has not filed the New York State Return.

WHEREFORE, respondent prays that a judicial determination be had of the status of the petitioner and his sister, Marleen Lalli, determining their right to share in the decedent's estate as a preliminary step in the fiduciary accounting proceeding.

Dated: Mount Vernon, N. Y.
September 18, 1974

ROSAMOND LALLI

MURIEL LAWRENCE
Attorney for the Administratrix
Office & P. O. Address
19 Gramatan Avenue
Mount Vernon, N. Y. 10530
914—MO 7-7383

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

ROSAMOND LALLI, being duly sworn deposes and says that she is the respondent in the above action. That she has read the answer herein and knows the contents thereof, that the same is true to her knowledge except as to those matters therein alleged on information and belief and as to them she believes it to be true.

ROSAMOND LALLI

(Jurat omitted in Printing)

Affidavit of Rosamond Lalli

SURROGATE'S COURT

COUNTY OF WESTCHESTER

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In the Matter of the Petition of

ROBERT M. LALLI, to compel ROSAMOND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts as such Administratrix.

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ROSAMOND LALLI, being duly sworn, deposes and says:

1. She submits this affidavit in support of her motion to dismiss the petition of Robert Lalli for compulsory accounting because he does not have status to make this application pursuant to EPTL 4-1.2 and neither he nor his sister, Maureen Lalli, are distributees of deponent's husband's estate.
2. That respondent was appointed Administratrix of her husband's estate after having been duly qualified on December 26th, 1973. She is the widow of the decedent. That she and the decedent were married about 34 years. That they shared the same home and bed from the time of their marriage until he met his violent death on or about January 7th, 1973. That following her marriage she never had employment and was completely dependent upon the decedent for her total support and she remains dependent upon the assets of her husband's estate for her continuing support.
3. That respondent and her late husband had no children and neither had more than the one marriage. She is his sole distributee.

Affidavit of Rosamond Lalli

4. That petitioner refers to himself and his sister as illegitimate children of the decedent, born out of wedlock who were supported by decedent, and petitioner further alleges that he was acknowledged as the decedent's son in writing.

5. In the previous motion papers in this matter, the petitioner has stated that he and his sister are the children of a woman now deceased and that no order of filiation was ever issued.

6. That both petitioner and his sister are in their mid twenties and are self-supporting.

7. In a prior motion petitioner annexed to his moving papers a photostat of consent to his marriage, which he says was signed by the decedent, acknowledging him to be his son. It is believed that this is relied upon by him as the basis for his allegation in his petition that he was "acknowledged" in writing as the son. It is respectfully contended that this document is not the equivalent of a filiation order nor is it an acknowledgement of paternity as it is signed by one claiming to be the guardian of the infant where both of his parents are dead.

8. If EPTL 4-1.2 is valid, then paternity is irrelevant, and there is no need for a trial of the issue of paternity. Neither petitioner nor his sister have status to require a compulsory accounting nor do they have any interest in decedent's estate. Matter of Hendrix (68 Misc. 2d 439).

WHEREFORE, deponent prays for an order dismissing the petition of Robert Lalli for compulsory accounting and for the determination of this Court that neither he nor his sister, Maureen Lalli, are the distributees of the decedent's estate and for such other and further relief as to this Court shall be just.

ROSAMOND LALLI

(Jurat omitted in Printing)

Answering Affidavit of Robert M. Lalli

SURROGATE'S COURT

COUNTY OF WESTCHESTER

File No. 1760—1973

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In the Matter of the Petition of

ROBERT M. LALLI, to compel ROSAMOND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts for such Administratrix.

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STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

ROBERT M. LALLI, being duly sworn, deposes and says:

1. That he is the petitioner in this proceeding and has actual knowledge of all the facts hereinafter stated.

2. That this is an application to compel the Administratrix herein to account after a period of more than seven months from the date of issuance of Letters to her by this Court on December 26, 1973.

3. That this affidavit is in opposition to a motion to dismiss the petition herein without specifying any ground thereof, but presumably from indication thereof on the ground that neither the petitioner nor his sister, Maureen Lalli, are distributees of the decedent's estate.

4. At the outset, your deponent respectively shows to the Court that the issue of status should not be summarily determined but should await the outcome of a hearing at

Answering Affidavit of Robert M. Lalli

which testimony can be taken. However, presumably the application although not so denominated is being made pursuant to CPLR 3212 and so facts should be shown to create an issue of fact to be considered.

5. Your deponent was married to Janice Elaine Bivins on April 26, 1969, pursuant to a license issued by the Clerk of the City of New Rochelle on April 18, 1969. At the time of said marriage, your deponent was not over the age of twenty-one (21) years having been born on August 24, 1948 and it was necessary for him to secure a consent to his marriage from his parents or guardian and such consent was signed by the decedent, Mario Lalli, and duly acknowledged on March 28, 1969. A photostat of such consent is hereto attached as Exhibit A.

6. The respondent in this proceeding attempts to make a great deal of the fact that the signature of Mario Lalli, the decedent, thereto is followed by the words in parenthesis reading as follows: "Sole guardian, mother deceased" in an attempt to argue thereby that this is not an acknowledgment of parenthood, but that of guardianship only. However, unfortunately for the respondent several lines above is a requirement to state the relationship of the party to be married to the signatory with an indication that such relationship should be specifically designated as follows: "My or our son, daughter or *ward*", (emphasis by deponent) on which line relationship unequivocally is stated to be "my son". Presumably, what was required was the signature of both parents, but as the mother was then dead, the Clerk was satisfied to accept the signature of the father, provided it is indicated that the mother was dead and that he was the sole parent and acknowledged by stating after his name, the words "Sole guardian, mother deceased".

Answering Affidavit of Robert M. Lalli

7. Clearly, the words, my son, denote the relationship of fatherhood when the signature is made by a male person and if the relationship be otherwise, then, of course, the words on the said line should have been as emphasized above "ward".

8. The respondent erroneously states in Item 4 that your deponent refers to himself and his sister as illegitimate children of the decedent. No such statements appears in the petition herein. In point of fact, there is no such thing as illegitimate children, the fault is that of the parents and not of the children. All children are natural children of their parents unless they be adopted and your deponent stated in the petition that he and his sister are natural children of the decedent to distinguish them from adopted children and the Court is particularly referred to the fact that the tendency now has been to protect all children.

9. Your deponent recognizes that he may not testify as to any transaction with the decedent any more than the respondent can. But the fact of the matter is that both your deponent and his sister have been supported by the decedent while he lived. However, there is to be submitted together with this affidavit, the affidavit of Rosetta Vollmer Ammirata, who was a confidential secretary to the late Mario Lalli for twelve years prior to the time he was murdered on January 7, 1973. That it is a fact that during his lifetime, particularly 1971 and 1972, my father, Mario Lalli, gave weekly funds to me and my sister, Maureen Lalli, of about \$100.00 a week in cash. That on occasions said money was left by the decedent with said Rosetta Vollmer Ammirata for Maureen who was working on a job outside and that sometimes when my father was not going to be in when I returned from my route, the money was left with said

Answering Affidavit of Robert M. Lalli

Rosetta Vollmer Ammirata for me with her. This weekly cash had nothing to do with my pay which was paid by check. In fact, until my father died as above stated, both my sister and I through these gifts were partly supported by him.

10. My father, Mario Lalli, was a Catholic and belonged to St. Mary's Church at 23 South High Street, Mount Vernon, New York and both my sister and myself were baptized in that Church, I on August 22, 1953 and my sister on March 19, 1950, as more fully appears from the certificates of Baptism, photostat copies of which are attached as Exhibits B and C.

11. At the time of the original proceeding in this case on the application of your deponent for Letters of Administration pursuant to a request from officials of this Court, there were filed and served upon the attorneys for the respondent, original affidavits with regard to the investigation made by the attorneys for the petitioner herein and your deponent desires to refer to said affidavits and to file in connection with such application for Administration as to the affidavits to be included as part of the affidavits on this application. Said affidavits, to be specific, are the affidavits of Nicholas Columbo sworn to May 7, 1973, Edgar Boone, sworn to April 12, 1973, Hermine Boone, sworn to April 12, 1973, Charlotte Levine, sworn to March 29, 1973, Rosetta Vollmer Ammirata, sworn to March 29, 1973 and Milton Levine, sworn to March 29, 1973, all showing acknowledgement by the decedent of your deponent and his sister as his natural children.

12. That the respondent in her application seems to imply that under the provisions of Estates, Powers and

Answering Affidavit of Robert M. Lalli

Trusts Law, Sec. 4-1.2 that the children in the position of the petitioner herein and his sister are not entitled to participate in the estate of the decedent. It is respectfully submitted that said section is unconstitutional under the provisions of the Constitution of the United States of America, and more specifically Amendment XIV thereof and is also unconstitutional under the provisions of the Constitution of the State of New York by reason of discrimination and denial of equal protection, particularly in cases such as this were partially supported by the decedent at the time of his death. Your deponent is well aware of the rule that law should not be cited in any of the affidavits and it is intended by your deponent's attorneys to submit a memorandum on the questions of law involved including the question of unconstitutionality of said sections.

13. In view of the acknowledgment of your petitioner and his sister by the decedent, partial support of them by the decedent, it is respectfully submitted that the questions of fact are raised in this proceeding and that a hearing should be required to determine such issues.

14. However, if the respondent be of the opinion that there are no questions of fact involved and convinces the Court accordingly, there is no objection to the Court determining the question of law involved based upon acceptance of this affidavit, the attached affidavit of Rosetta Vollmer Ammirata and the above affidavits referred to.

WHEREFORE, your petitioner respectfully prays that this motion be denied.

ROBERT M. LALLI

(Jurat omitted in Printing)

Exhibit A to Affidavit of Robert M. Lalli

App. 26, 1969
St. Louis X, Scarsdale

PROOF OF APPLICANT'S AGE

If an applicant for license to marry is under twenty-one years of age, documentary proof of age in one of the following forms must be submitted. Indicate by (✓) which of the forms listed below was presented. After inspection and approval of the paper submitted, it may be returned to the applicant.

Groom, Bride
 Original or certified copy of a birth record
 Certification of birth
 Baptismal record
 Employment certificate
 School record
 Immigration record

CERTIFICATE OF CONSENT

THIS IS TO CERTIFY that I, who have hereunto subscribed
 (I/we)
 name(s), do hereby consent that
 (my/our) ROBERT T. LALLI
 (Name of Minor)

who is my son and who is under the age of
 (My or our son, daughter, or ward)
21 years, shall be united in marriage to
JANICE BIVINS
 by any minister of the gospel or other person authorized by law to
 solemnize marriages.

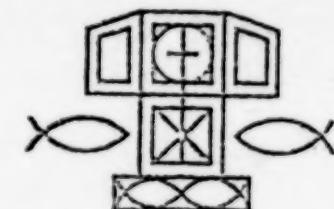
WITNESS my hand this 28th day of MAR A.D. 1969
Mari Lalli
 (Signature)
 (Guardian)

State of New York
 County of Westchester
 On the 28th day of March 1969, before me personally
 came Robert T. Lalli
 and
 to me known, and known to me to be the individuals described in and
 who executed the foregoing consent, and they acknowledged to me that
 they had executed the same.

Notary Public

Exhibit B to Affidavit of Robert M. Lalli

Certificate of Baptism



CHURCH OF
Saint Mary's
23 South High Street

* This is to Certify *

That Robert Michael Lalli
 Child of Mario Lalli
 and Elinor Farrelly
 born in Marine Vernon
 on the 24 day of August 1953

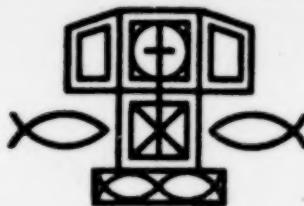
* Was Baptized *

on the 27 day of August 1953

According to the Rite of the Roman Catholic Church
 by the Rev. William A. Keegan
 the Sponsors being Raymond O'Connell
 and Venitio Leyden as appears
 from the Baptismal Register of this Church.

Dated Feb. 10, 1973
Joseph Dein
 Pastor.

Exhibit C to Affidavit of Robert M. Lalli

Certificate of Baptism

CHURCH OF

Saint Mary's
23 South High Street

* This is to Certify *

That Maureen Barbara LalliChild of Mario Lalliand Eileen Reina Jarrelborn in Mount Vernonon the 19 day of March 1950

* Was Baptized *

on the 28 day of May 1950

According to the Rite of the Roman Catholic Church

by the Rev. B. Mc Sherrythe Sponsors being Pasquale Lombardiand Evelyn Lombardi as appears

from the Baptismal Register of this Church.

Dated Feb. 10 1973

Joseph Durkin Pastor.

Affidavit of Rosetta Vollmer Ammirata
SURROGATE'S COURT

COUNTY OF WESTCHESTER

File No. 1760-1973

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In the Matter of the Petition of

ROBERT M. LALLI, to compel ROSAMOND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts for such Administratrix.

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STATE OF NEW YORK }
 COUNTY OF WESTCHESTER } ss.:

ROSETTA VOLLMER AMMIRATA, being duly sworn deposes and says:

That she was employed as a confidential secretary to the late Mario Lalli, the decedent herein prior to the time when he was murdered on January 7, 1973. That during his lifetime, particularly, 1971 and 1972, Mario Lalli gave weekly gifts to each of his children, Robert Lalli and Maureen Lalli, of about \$100.00 a week in cash. That said monies were often left by Mario Lalli with your deponent for Maureen Lalli who was working on a job on the outside and that sometimes when Mario Lalli was not expected to be in when Robert Lalli returned to the office Mario Lalli left the monies with her for said Robert Lalli.

ROSETTA VOLLMER AMMIRATA

(Jurat omitted in Printing)

Affidavit of Nicholas Columbo

STATE OF NEW YORK }
COUNTY OF WESTCHESTER }ss.:

NICHOLAS COLUMBO, being duly sworn, deposes and says:

That he resides at 36 Birch Street, New Rochelle, New York, and has actual knowledge of all of the facts herein-after stated.

That about 18 years ago he was the contractor working at excavating sites for houses on Darling Avenue and Rogers Avenue in New Rochelle, New York. At that time he met two persons who were living at 135 Daisy Farms Drive, New Rochelle, New York. That the man's name was Mario Lalli and the woman's name was Eileen and she was known to him as Mrs. Lalli. That they had three children; a boy named Robert Lalli, a girl named Maureen Lalli an older boy who was known to him as William Lalli.

That he became friendly with both Mario Lalli and Eileen Lalli and he visited with them at their home on many occasions throughout the years. That he is married and his wife was also friendly with the Lallis and also, his son who was friendly with Robert.

That on many occasions he heard Mario Lalli call Robert Lalli and Maureen Lalli his son and daughter and Mario Lalli told your deponent that Robert Lalli and Maureen Lalli were his children but also told him that William Lalli was not his son but lived with them as he was the son of Eileen with another man. That on many occasions he heard Eileen refer to all the three children, to wit, William, Robert and Maureen as being her children to whom she gave birth. That Eileen told him that the father of William was another man but the father of Robert and Maureen was Mario Lalli.

Affidavit of Rosetta Vollmer Ammirata

About eight or ten years after he first met Mario and Eileen Lalli, he was visiting at their home on one occasion, alone, when the two of them got confidential with him and told him they were not married and they were living together because of the fact that Mario was married before to a woman known as Rose who lived in Mount Vernon and with whom he had no children, and that as Mario liked the children and liked Eileen and did not want to get a divorce, they started living together, and then Mario told him in the presence of Eileen that Robert and Maureen were the children of Mario and Eileen, that Eileen's name was Eileen Farrell, and that William was the son of Eileen by another man to whom she was not married. That Eileen confirmed everything that Mario said.

That thereafter they continued as friendly as they were before, until the time that Eileen died on October 11, 1968. That he visited with Eileen and Mario on many occasions and that about a month before Eileen died, she repeated to him that she was not married to anyone, that with Mario Lalli she had two children, Robert and Maureen, and that with another man she had the other boy, William.

That after Eileen died, he continued to be friendly with Mario until he died on January 7, 1973.

That his information comes from the conversations that he had with both Mario and Eileen.

NICHOLAS COLUMBO

(Jurat omitted in Printing)

Affidavit of Edgar Boone

STATE OF NEW YORK }
 COUNTY OF WESTCHESTER }ss.:

EDGAR BOONE, being duly sworn, deposes and says:

That I reside at 66 Foster Avenue, Mount Vernon, New York.

I have known the Lalli Family all of my life because Mario Lalli's sister went to school with him. I knew Mario Lalli for 27 years and did business with him for 27 years. I have known Bob Lalli since he was 15 years old. Mario Lalli introduced Bob Lalli to me as his son. When Bob Lalli was 16 years old he worked for me one Summer at my business, which is Boone Press, located at 30 Beach Street, Mount Vernon, New York. During that same Summer, Mario Lalli introduced Eileen Farrell to me as Bob's mother. Eileen Farrell came by my place of business on several occasions to pick up her son, Bob, and during one of those times she was introduced to me as Bob's mother. From that time on, Bob Lalli worked for his father, Mario Lalli, and I saw him at least once a week for the next 7 years, when they came to my place of business to do printing work for them.

About 2 years ago, Mario Lalli told me that the man known as William Lalli was actually not his son but was the son of Eileen Farrell. Mario Lalli told me that he raised Bill Lalli as his own son.

During the Summer that Bob Lalli worked for me and when his mother came to my place of business to pick up Bob after work, I was introduced to Maureen Lalli who was identified as the daughter of Mario Lalli and Eileen Farrell.

I would like to add one correction to my earlier statements and that is that I knew Eileen Farrell as Eileen Lalli, the wife of Mario Lalli. I did not know that her last name was anything else but Lalli until approximately 5 years ago.

EDGAR BOONE

(Jurat omitted in Printing)

Affidavit of Hermine Boone

STATE OF NEW YORK }
 COUNTY OF WESTCHESTER }ss.:

HERMINE BOONE, being duly sworn, deposes and says:

That I reside at 56 Foster Avenue, Mount Vernon, New York.

That I am the wife of Mr. Edgar Boone.

I had known Mario Lalli approximately 18 years prior to his death. During that 18 year period, while I was working in my husband's business, I met, spoke to and did business with Mario Lalli on many occasions.

When Bob Lalli was 16 years old, he came to work for my husband at the printing business and Mario Lalli introduced Bob to me as his son.

For the past 8 years I have known Bob by no other name than Bob or Robert Lalli. In fact, in early 1969, my husband and I attended an engagement party in honor of the engagement of Robert Lalli and his fiancee, Janis Bivins. My husband and I sat at the same table as Mario Lalli, Robert Lalli and his fiancee, and Mario Lalli indicated much pride and happiness about his son, Bob, and his marriage to be.

HERMINE BOONE

(Jurat omitted in printing)

Affidavit of Charlotte Levine

STATE OF NEW YORK }
 COUNTY OF WESTCHESTER }ss.:

CHARLOTTE LEVINE, being duly sworn, deposes and says:

That I reside at 30 Hamilton Avenue, Mount Vernon, New York.

That I am now one of the owners of Intown Newspaper & Magazine Inc. Shop located at 6 West First Street, Mount

Affidavit of Charlotte Levine

Vernon, New York, and North End Distributors Inc. located at 5 South Fifth Avenue, Mount Vernon, New York.

That I am the wife of Milton Levine for 36 years.

I met Mario Lalli for the first time when he was working for Mike Spear. The next recollection I have is when he came to the house to speak to Milton, because he was going to take over the Armstrong runs and that was about 32 years ago. Then he went into the service and he had asked Milton to take care of things for him while he was away. Mario came out of the service and Milton, my husband, shared an office on North Second Avenue, Mount Vernon, New York, and Renee would be there doing clerical work and she also delivered scratch sheets.

My husband and I had received an invitation to Mario's wedding before he went into the service. We did not attend his wedding and I met his wife, Rose, for the first time after he came out of the service.

I would see Renee at the office and one day I remember hearing that Renee was going to have a baby. I knew Renee was not married at the time and I asked my husband about it and he told me that it was Mario's baby. I knew at the time that Renee was living at Mount Vernon Avenue and after that Mario set her up in an apartment on Bronx River Road. I saw Renee several times after that and I heard that she had another child that was Mario's. At one time all of this came out into the open. The way it happened was:

There was a story in the newspaper that Mario Lalli was in Coney Island with his children and while on a ride on the Ferris Wheel a large sum of money, which I recall as \$5,000, fell out of his pocket. At that point, everyone knew that Mario was leading a double life with two women, because we all knew that he did not have children with Rose. Thereafter, Mario discussed openly of who his children were.

Affidavit of Charlotte Levine

On numerous occasions he told me that Renee had a child before he met her, that that child was William Lalli, that he has two children of his own, that they are Robert Lalli and Maureen Lalli. I also recall having taken my own children to the Circus and Rodeo and meeting Mario Lalli there with his two children and lots of their friends. From that time, of course, he always spoke openly of his children and Rose learned to live with the situation.

I have received a copy of this statement.

CHARLOTTE LEVINE

(Jurat omitted in Printing)

Affidavit of Rosetta Vollmer

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

I, ROSETTA VOLLMER, being duly sworn, depose and say:

That I reside at 497 Bronx River Road, Yonkers, New York.

That I am 32 years of age and have been employed as a secretary for Mario Lalli since on or about January of 1961. That I acted in the capacity of his confidential secretary from January, 1961, until his death in January, 1973.

That during the period of my employment he discussed with me problems and things involving his family. He told me on numerous occasion that although three children carried his name, that they were William Lalli, Bobby Lalli and Maureen Lalli, that although all three were born to Renee (the name he called the woman, now deceased, known as Eileen Renee Farrell), he was the father of two and that those two children were Bobby and Maureen, that at the time he met Renee she already had a child living with her

Affidavit of Rosetta Vollmer

which had been born to her although she had never been married, that that child's name was William, that William carried the name "Lalli" because he felt it best that all of the children living in the same household should have the same last name.

When I was first working there, I met a woman who was introduced to me as Mario Lalli's wife. She was introduced to me as Rose. I knew that the person who used the name William Lalli was known as Mario Lalli's son. That on one occasion I asked the woman, Rose, how her son was. Whereupon, Victor Lalli, who was in the office, gave me a look as though to say "shut up", so I did just that and subsequently Victor Lalli came over to me and told me that none of the children were Rose's and that William Lalli was not Mario's son but a boy that the woman he was living with had before he met her. Victor Lalli also told me in subsequent conversations that Mario had only two children that were his and that they were Bobby and Maureen.

At the present time I am employed as a secretary for Robert Lalli.

I have received a copy of the foregoing statements.

ROSETTA VOLLMER

(Jurat omitted in Printing)

Affidavit of Milton Levine

STATE OF NEW YORK }
COUNTY OF WESTCHESTER }
ss.:

MILTON LEVINE, being duly sworn, deposes and says:

That I reside at 30 Hamilton Avenue, Mount Vernon, New York.

That I was the owner of Intown Newspaper & Magazine Inc. Shop located at 6 West First Street, Mount Vernon, New York, and North End Distributors Inc., which is now

Affidavit of Milton Levine

located at 5 South Fifth Avenue, Mount Vernon, New York, and was previously located on North Fifth Avenue, Mount Vernon, New York. That those two establishments are presently owned by Charlotte Levine, my wife, and my son, Peter Levine.

That I had known Mario Lalli since he was about 9 years of age. At about that time his family was in financial straits. Being that my brother, Benjamin Marcus, and myself were then employed by the Ginsberg News Company, which is now known as the Gaynor News Company, to help him financially we had him working with us or for us as a tail boy on the newspaper trucks. When Mario was over 18 years of age he went to work for Mike Spear, he went to work delivering newspapers. Upon Mike Spear going out of business, Mario Lalli took over the distribution of the National and Armstrong Program. I then went to work for him in my spare time. He also had the distribution of a "green card". Upon his entering the service, he asked me to distribute the "green card" for him so he would not lose the distributorship. His Armstrong and National Sheet were distributed for him by one of our co-workers, Lloyd Turner due to shortage of manpower. Lloyd Turner asked me if I could get someone to cover the New Rochelle Route. At this time I also worked for the Gaynor News Company as a routeman in Port Chester.

In Port Chester I met a young lady by the name of Eileen Renee Farrell. She told me she was being laid-off from her place of employment and I asked her if she would like to drive a car and deliver some sheets from store to store. At that time she had a son of approximately 2 years old and she needed employment to support herself and her son. In order to cut her travelling, she moved to Mount Vernon where she took over the delivery of the New Rochelle Route.

Affidavit of Milton Levine

Upon Mario Lalli's return from service, in order to familiarize himself on the routes, he rode with the different routemen. I introduced him to Eileen Renee Farrell and to the best of my knowledge they became friendly. She lived at 107 Mount Vernon Avenue at this time, almost diagonally across from where Mario Lalli had his office. Being on friendly terms with both Mario and Renee, they would confide in me from time to time.

At one time, driving down Mount Vernon Avenue, on my way to Yonkers, Eileen Renee Farrell, whom we all called Renee, stopped me and told me that she was having a baby by Mario Lalli. On my return from the route, checking into Mario Lalli, on South Terrace Avenue, Mount Vernon, New York, I called him to one side and I told him what Renee had said to me. He said "This is true". Before the child was born, he told me that if it was a boy they wanted to name him Robert Michael Lalli. Being born a boy, he naturally assumed that name.

About a year or a year and a half after Mario Lalli's son was born, he told me that he was taking an apartment for Renee on Bronx River Road. When they moved to Bronx River Road, Renee took the apartment under the name of Lalli and he was known by the neighbors as Renee's legal husband.

Sometime after they moved to Bronx River Road, he told me that he and Renee were expecting another child, that he was now contemplating buying a house for Renee, his son Bobby, Renee's son Billy, and the other child that they were expecting. He then bought a house in New Rochelle which he told me about. In fact, he asked me to come up and look at the house before he bought it. The house was bought under the name of Eileen Renee Farrell. He told me he bought this house because he wanted his two

Affidavit of Milton Levine

children to have grounds to play in and a good school to go to.

Many is the time that Mario brought Bobby and Maureen, after she was roughly two or three years old, in the station-wagon for me to see. He introduced them to me and always called them his son and daughter and I have always known them as his son and daughter.

After turning over my businesses to my wife and son, I still help them in the store. Most every morning at approximately 5:30 A.M. up to approximately three or four days before his death, Mario would stop in the store to speak to me, due to the fact that we were old friends. About six months before his death, he told me he was thinking of retiring and turning the business over to his son, Robert Lalli, and the son of Renee Lalli, Billy, his businesses known under different names of Vernon Book Sales Corp. and Oak Sales Inc. He told me that he would draw approximately \$200 a week for himself and they would have to give his daughter, Maureen approximately \$100 a week for herself and they were to keep the balance.

Upon learning of his death, I contacted Bobby Lalli and told him what his father had said to me, so I took it for granted that I would now be doing business with Robert Lalli and William Lalli.

I have received a copy of the foregoing statement.

MILTON LEVINE

(Jurat omitted in printing)

Reply Affidavit of Rosamond Lalli

SURROGATE'S COURT

COUNTY OF WESTCHESTER

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In the Matter of the Petition of

ROBERT M. LALLI, to compel ROSAMOND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts as such Administratrix.

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STATE OF NEW YORK
COUNTY OF WESTCHESTER }ss.:

ROSAMOND LALLI, being duly sworn, deposes and says:

She submits this affidavit in reply to the answering affidavit of the petitioner opposing the motion to dismiss his petition for an involuntary accounting.

She, as the widow of the decedent, vehemently denies that the alleged illegitimate are the children of her late husband. Mario Lalli operated several business and he employed persons to assist him in operating these businesses. He used the services of an accountant and those of a lawyer. He was the type of a man who was strong of will and determination. It may well be that these factors led to his murder by the confessed killer, William Lalli, the brother of petitioner, who also uses decedent's name, though admittedly decedent was not his father.

If either Robert or Maureen Lalli were his children, he would surely given them his protection through a filiation order and he would have unqualifiedly declared himself to

Reply Affidavit of Rosamond Lalli

be their father in court through a declaratory judgment. He was not the kind of man that would sign a paper consenting to Robert's marriage as his guardian, if in fact, he was Robert's father. For the first time following decedent's death, both of the alleged illegitimate raise the issue of paternity. The alleged consent which petitioner strongly urges the court to accept as an acknowledgment of his status lacks substance.

Two certifications of Baptism are annexed to the opposing papers. Disregarding the passage of time between birth and baptism particularly with respect to Robert Lalli, it is respectfully contended that these certificates cannot be adduced for the purpose of proving the identity of petitioner's antecedents. That in the baptism ceremony only the presence of a child, his sponsors and the priest are required. The consent of one parent to the baptism, prior to the 1966 revision, was not even necessary and even a child of non Catholic, in a case of an emergency, could be baptized in a Roman Catholic Church, without the permission and consent of either of his parents. New Canon Law 750, See Summary of Canon Law, Rev. Emile Jombart, page 91. Baptism is a consecration of a child in the Catholic faith. It cannot attest to the paternity of a child, where neither the permission, consent or presence of his parents are required.

These illegitimate should have produced their birth certificates issued by the State of New York at the time of their birth, which would contain the naming of their father by their deceased mother. This record of birth, which is required to be made in accordance with the laws of the State of New York, would speak more loudly and convincingly as to the petitioners' pedigree, than the statements of persons who may or may not be witnesses to off hand remarks made by the decedent, obviously made not to be taken ser-

Reply Affidavit of Rosamond Lalli

iously. Petitioners failure and refusal to supply their New York birth certificates, attests that decedent was not their father.

The affidavit of Rosetta Vollmar Ammirata, fails to state her relationship to the petitioner. She acknowledged her employment with him during December 1973, as his secretary and it is believed she is still employed by him. It is believed that Mrs. Ammirata will admit upon questioning that the decedent was a serious and strong willed man who would have legally acknowledged petitioner and his sister, if they were in fact his children.

It is respectfully contended that if EPTL 4-1.2 is constitutional as it applies to the fact pattern here and as it has been held constitutional on the exact fact pattern as it appears in Matter of Hendrix 68 Misc 2d 439 and in Matter of Belton, 7 Misc 814, that a trial of the petitioner's and his sister's pedigree is unnecessary and wasteful of the Court's time and respondent's funds. A finding of this section's validity will obviate the need for the accounting as the deponent is the sole heir of this estate.

WHEREFORE, respondent prays that her motion for the dismissal of the petition be granted.

ROSAMOND LALLI

(Jurat omitted in Printing)

Decree of Surrogate Evans V. Brewster

At the Surrogate's Court, held in and for the County of Westchester, at the County Courthouse, White Plains, New York, on the 26th day of November, 1974.

Present:

HON. EVANS V. BREWSTER,

Surrogate

INDEX #1760/73

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In the Matter of the Petition of

ROBERT M. LALLI to compel ROSAMOND LALLI as the Administratrix of the Estate of MARIO LALLI, deceased, to render and settle her accounts as such Administratrix.

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ROBERT M. LALLI, residing at 135 Daisy Farm Drive, in the City of New Rochelle, County of Westchester, State of New York, having petitioned the Surrogate's Court of the County of Westchester to compel Rosamond Lalli, Administratrix of the goods, chattels and credits of Mario Lalli, deceased, who at the time of his death resided at 415 Cramatan Avenue, in the City of Mount Vernon, County of Westchester, to render and settle her account as such Administratrix, by a petition duly verified August 23, 1974, and a citation having duly issued thereon returnable on the 20th day of September 1974, and said Rosamond Lalli having answered said petition by an answer duly verified September 16th, 1974, and having thereafter moved by a notice of motion dated October 1, 1974, supported by the affidavit of

Decree of Surrogate Evans V. Brewster

Rosamond Lalli sworn to October 1, 1974, to dismiss the petition of said Robert Lalli on the ground that neither Robert Lalli nor his sister, Maureen Lalli, are distributees of decedent's estate under provisions of EPTL 4-1.2 and the petitioner having submitted an affidavit sworn to October 10, 1974, together with exhibits thereto attached, and affidavit of Rosetta Vollmer Ammirata sworn to October 10, 1974, in opposition thereto, and said Rosamond Lalli having submitted a reply affidavit sworn to October 23, 1974, and said application having come up to be heard on the 25th day of October, 1974, and after hearing Muriel Lawrence, Esq., attorney for the respondent, in support of the application, and Henkin, Henkin and Quinn, Esqs. (Leonard M. Henkin, Esq. of counsel), attorneys for the petitioner, in opposition thereto, and upon reading all of the aforesaid and due deliberation having been had, and the Surrogate having rendered a decision dated November 15, 1974, sustaining the constitutionality of EPTL 4-1.2 in its application to the petitioner and his sister herein, as against their claim that said section is unconstitutional, in application to them

Now, it is

ORDERED, ADJUDGED AND DECREED, that EPTL 4-1.2 is constitutional as applicable to the petitioner herein, and that by reason thereof petitioner is not a distributee of the decedent herein and that he lacks status to petition for compulsory accounting by the Administratrix, and it is further

ORDERED, ADJUDGED AND DECREED, that the petition herein he and the same is hereby dismissed.

EVANS V. BREWSTER
Surrogate

List of Opinions and Orders

The opinion of Surrogate's Court, Westchester County is printed as Appendix B in Jurisdictional Statement NO. 77-1115.

The original order of affirmance of New York Court of Appeals is printed as Appendix C in the Jurisdictional Statement NO. 75-1148.

The original opinion on appeal to the Court of Appeals is printed as Appendix A in the Jurisdictional Statement NO. 75-1148; 38 N.Y. 2d 77.

The order of affirmance of New York Court of Appeals on reconsideration is printed as Appendix C in the Jurisdictional Statement NO. 77-1115.

Notice of Appeal is printed in Appendix E to Jurisdictional Statement NO. 77-1115.

The majority and dissenting opinions on reconsideration are printed as Appendix A in the Jurisdictional Statement NO. 77-1115; 43 N.Y. 2d 65.